

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Lotepro Corporation :
: AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Corporation Franchise Tax :
under Article 9-A of the Tax Law :
for the Year 1972

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 3rd day of April, 1981, he served the within notice of Decision by certified mail upon Lotepro Corporation, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Lotepro Corporation
c/o Eberhard R. Hellwig
1140 Ave. of the Americas
New York, NY 10036

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
3rd day of April, 1981.

Orville A. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

April 3, 1981

Lotepro Corporation
c/o Eberhard R. Hellwig
1140 Ave. of the Americas
New York, NY 10036

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
,
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
LOTEPRO CORPORATION	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Franchise Tax on Business Corporations	:	
under Article 9-A of the Tax Law for the Year	:	
ended December 31, 1972.	:	

Petitioner, Lotepro Corporation, 801 2nd Avenue, New York, New York 10017, filed a petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Article 9-A of the Tax Law for the year ended December 31, 1972 (File No. 16742).

A formal hearing was held before Archibald F. Robertson, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 18, 1978 at 11:00 A.M. Petitioner appeared by its Secretary, Eberhard Hellwig. The Audit Division appeared by Peter Crotty, Esq. (Laurence Stevens, Esq., of counsel).

ISSUE

Whether a loan made by a New York bank to petitioner (which loan was subsequently re-lent by petitioner to its out-of-state parent corporation) constituted "business capital" within the meaning of section 208.7 of the Tax Law.

FINDINGS OF FACT

1. On December 10, 1975, the Audit Division issued a Statement of Audit Adjustment to petitioner, for the year 1972, showing a deficiency of \$1,603.00. The deficiency was based on the disallowance of \$1,500,000.00 (in the average) of a \$3,000,000.00 long term loan, in the computation of total capital. It

was stated that "(l)oans or advances outstanding for more than one year as of any date during the year covered by report are not deductible in computing business capital". On September 10, 1975, the Audit Division issued a Notice of Deficiency to petitioner for the year 1972, asserting a deficiency of \$1,603.00, plus interest.

2. During the period herein involved, petitioner, Lotepro Corporation ("Lotepro"), was a Delaware corporation doing business in the State of New York. Petitioner's parent corporation Linde AG ("Linde"), did no business within the State of New York during the period herein involved.

3. In mid-1971, petitioner entered into a three million dollar loan agreement within the State of New York with European American Bank ("EAB"). This loan agreement provided for a September, 1973 maturity. Petitioner assigned three million dollars in receivables from its parent, Linde, as collateral for this loan.

4. Petitioner's financial statement for 1972 as prepared by Price, Waterhouse, records the EAB loan as a three million dollar loan received by petitioner, which loan was immediately re-lent to petitioner's parent, Linde, resulting in a zero balance.

5. The EAB loan proceeds never appeared in any bank account controlled by petitioner. The proceeds were transferred directly by EAB to the German bank account of Linde.

6. Petitioner made quarterly interest payments to EAB throughout the period in which the loan was outstanding. These payments were immediately deducted by petitioner from monies owed by it to Linde.

7. The EAB loan proceeds were refunded directly to EAB by Linde, upon the maturation of the loan in September of 1973.

8. Petitioner received no commission from Linde for the services it performed in connection with the EAB loan. No part of the EAB loan was used by Linde to finance any of petitioner's business activities directly.

CONCLUSION OF LAW

A. That petitioner received a loan from a New York bank in 1971 which was used by petitioner in the financing of petitioner's parent corporation. This loan was an asset of petitioner, and thus constituted business capital, within the meaning of section 208.7 of the Tax Law; therefore, petitioner is liable for additional franchise tax for 1972 under Article 9-A of the Tax Law.

B. That the petition of Lotepro Corporation is denied and the Notice of Deficiency is sustained.

DATED: Albany, New York

APR 03 1981

STATE OF NEW YORK


PRESIDENT


COMMISSIONER


COMMISSIONER